

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JAMES N. HOTT,	)	
	)	Civil Action No. 3:15-cv-16 (Groh)
Plaintiff,	)	
	)	Electronically filed: February 18, 2015
v.	)	ELECTRONICALLY FILED
	)	
ADVANCE STORES COMPANY, INC.	)	
and LONNIE A. GARDNER,	)	
	)	
Defendants.	)	

**DEFENDANT'S NOTICE OF REMOVAL**

To: The Honorable Judges of the United States District Court  
for the Northern District of West Virginia

Defendant, Advance Stores Company, Inc., by and through its undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure and Title 28 of the United States Code §§ 1332, 1441 and 1446, hereby files this Notice of Removal and remove the action entitled "James Hott v. Advance Stores Company, Inc. and Lonnie Gardner" Case No. 14-C-109 in the Circuit Court of Mineral County, West Virginia. Removal of this action is based upon the following:

**BACKGROUND**

1. Plaintiff James Hott filed a Complaint in the instant action in the Circuit Court of Mineral County, West Virginia, on or about August 14, 2014. A copy of the Complaint filed by Plaintiff in the state court action is attached hereto as *Exhibit A*.

2. Plaintiff amended his Complaint on December 31, 2014 to reflect the correct corporate entity, Advance Stores Company, Inc. A copy of the Amended Complaint filed by Plaintiff in the state court action is attached hereto as *Exhibit B*.

3. On January 29, 2015, counsel for Defendant Advance Stores Company, Inc. accepted service of the Amended Complaint.

4. This Notice of Removal is being filed within 30 days from service on Defendant Advance Stores Company, Inc. of the Amended Complaint in the above matter. The Notice of Removal is, therefore, timely filed under 28 U.S.C. § 1446(b).

#### **VENUE**

5. The Circuit Court of Mineral County, in which Plaintiff's Amended Complaint was filed, is within this Court's District. Therefore, the action is properly removable to this Court pursuant to 28 U.S.C. § 1446(b).

#### **REMOVAL IS PROPER BASED ON FEDERAL QUESTION JURISDICTION**

6. In Counts I and II of his Amended Complaint, Plaintiff alleges, *inter alia*, that Defendants violated the Family and Medical Leave Act, specifically 29 U.S.C. § 2615(A)(1) and 29 U.S.C. § 2615(A)(2).

7. Accordingly, original subject matter jurisdiction is vested with this Court pursuant to 28 U.S.C. §1331, rendering removal of the matter from the Circuit Court of Mineral County, West Virginia, proper.

#### **COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

8. Pursuant to 28 U.S.C. §1446(b)(2)(c), Defendant Lonnie A. Gardner consents to the removal of this action to the United States District Court for the Northern District of West Virginia. A copy of Mr. Gardner's consent is attached hereto as *Exhibit C*.

9. This Notice of Removal has been filed within 30 days after service of Plaintiff's Amended Complaint on Defendant Advance Stores Company, Inc. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b).

10. Copies of all process, pleadings, orders and other papers or exhibits of every kind currently on file in the Circuit Court of Mineral County, West Virginia, are attached to this Notice of Removal as *Exhibit D*, as required by 28 U.S.C. §1446(a).

11. Upon filing this Notice of Removal, Defendant Advance Stores Company, Inc. will provide a written notification to Plaintiff and will file a Notice of Filing of Notice of Removal with the clerk of the Circuit Court of Mineral County, West Virginia. As required by 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Filing of Notice of Removal is attached hereto as *Exhibit E*.

12. Defendant files this Notice without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has stated claims upon which relief can be granted, and without conceding that Plaintiff is entitled to any damages against Defendants in any amount whatsoever.

WHEREFORE, Defendant, Advance Stores Company, Inc., respectfully requests that the United States District Court for the Northern District of West Virginia, accept the removal of this action from the Circuit Court of Mineral County, West Virginia and direct that said Court have no further jurisdiction over this matter unless this case is remanded.

Dated: February 18, 2015

Respectfully submitted,

JACKSON LEWIS P.C.

s/ A. Patricia Diulus-Myers

A. Patricia Diulus-Myers

W.V. State Bar No. 9601

[diulusmp@jacksonlewis.com](mailto:diulusmp@jacksonlewis.com)

Bethany Swaton Wagner

W.V. State Bar No. 11341

[bethany.wagner@jacksonlewis.com](mailto:bethany.wagner@jacksonlewis.com)

One PPG Place, 28<sup>th</sup> Floor

Pittsburgh, PA 15222

(412) 232-0404

(412) 232-3441 *facsimile*

Attorneys for Defendants